

Supreme Court, Cal.  
FILED

05-646 NOV 14 2005

No. \_\_\_\_\_

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IN THE SUPREME COURT OF THE UNITED  
STATES

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RALPH MANUEL DAVALOS, Petitioner

v.

STATE OF CALIFORNIA, Respondent

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PETITION FOR A WRIT OF CERTIORARI  
TO THE CALIFORNIA COURT OF APPEAL,  
SECOND APPELLATE DISTRICT, DIVISION SIX

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PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. May law enforcement search a passenger during a traffic stop pursuant to the passenger's parole terms absent any individualized suspicion of criminal wrongdoing.

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## **PETITION**

Petitioner Ralph Manuel Davalos respectfully prays that a writ of certiorari issue to review the decision of the California Court of Appeal, Second Appellate District, Division Six, affirming his conviction and the denial of his motion to suppress evidence pursuant to the Fourth Amendment to the United States Constitution.

## **LIST OF PARTIES**

The parties are as they appear in the caption.

## **OPINION BELOW**

The opinion of the California Court of Appeal, Second Appellate District, Division Six, is not published. A copy is attached as Appendix C. The California Supreme Court's order denying review on August 17, 2005 is attached as Appendix A. The order denying petitioner's suppression motion by the Superior Court of the State of California,

County of Ventura, is attached as Appendix B.

## **JURISDICTION**

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1257(a). The California Court of Appeal, Second District, Division Six, filed its opinion on May 31, 2005. The California Supreme Court filed its order denying review on August 17, 2005.

## **CONSTITUTIONAL PROVISIONS INVOLVED**

United States Constitution, Fourth Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized.



## **STATE STATUTES INVOLVED**

*California Penal Code* section 1538.5:

(a) (1) A defendant may move for the return of property or to suppress as evidence any tangible or intangible thing obtained as a result of a search or seizure on either of the following grounds:

(A) The search or seizure without a warrant was unreasonable.

(B) The search or seizure with a warrant was unreasonable because any of the following apply:

(i) The warrant is insufficient on its face.

(ii) The property or evidence obtained is not that described in the warrant.

(iii) There was not probable cause for the issuance of the warrant.

(iv) The method of execution of the warrant violated federal or state constitutional standards.

(v) There was any other violation of federal

or state constitutional standards.

## STATEMENT OF THE CASE

Petitioner, Ralph Manuel Davalos ("Davalos"), was charged with carrying a dirk or dagger. *Clerk's Transcript* "CT" 2. He was also charged with having a prior serious or violent and felony, and having served a prior prison term. CT 2.

Davalos moved to suppress the evidence against him under *California Penal Code* Section 1538.5, on the grounds that he was searched unreasonably pursuant to parole search terms without any individualized suspicion of wrongdoing. CT 16. His motion was denied. CT 46.

Davalos then pled guilty to carrying a dirk or dagger and admitted sustaining the prior felony and the prior prison term as charged. *Reporter's Transcript* ("RT") 26-29. The trial court exercised its discretion to strike the prior felony conviction in the interests of justice, and Davalos was placed on parole. CT 83.

## **HOW THE FEDERAL QUESTION WAS PRESENTED BELOW**

Davalos moved the trial court to suppress evidence pursuant to the Fourth Amendment of the Federal Constitution, according to the procedure provided for by state law by state law, set forth in California Penal Code section 1538.5. CT 16.

In ruling on Davalos's motion to suppress, the trial court received evidence from the law enforcement officer who searched him. CT 89-99. When the trial court denied his motion, Davalos pled guilty to carrying a dirk or dagger. RT 26-29.

Davalos appealed his sentence to the California Court of Appeal, Second District, Division Six, claiming the parole search violated the Fourth Amendment to the United States Constitution. The Court of Appeal affirmed the trial court's ruling, and thus Davalos's conviction, on May 31, 2005. Davalos petitioned the California Supreme Court for review, and review was denied in an order filed August 17, 2005.

## REASONS FOR GRANTING THE WRIT

The California Supreme Court in *People v. Reyes*, 19 Cal.4<sup>th</sup> 743 (1998) decided an important question of federal law, upheld by the Court of Appeal, Second District in this case, that should be reviewed by this Court. Specifically, the California Court of Appeal has concluded that the Fourth Amendment to the federal Constitution permits parole searches without any individualized suspicion of criminal wrongdoing. This ruling is not consistent with the requirements of the Fourth Amendment.

The California Supreme Court was provided the opportunity to review petitioner's federal constitutional challenge to *People v. Reyes*, *supra*, 19 Cal.4<sup>th</sup> at p. 743 and declined to do so. Appendix A.

Davalos asks this court to review the California Supreme Court's decision in *People v. Reyes* and to resolve the question left open in *United States v. Knights*, 534 U.S. 11 (2001) [whether a parole search for investigatory or probationary purposes performed *absent any individualized suspicion* would satisfy the reasonableness requirement of the Fourth.].)